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OGC HAS REVIEWED.

25 July 1955

MEMORANDUM FOR: Deputy Director (Support)**SUBJECT : Payment of Per Diem to Dependents While at an Evacuation Post****REFERENCE : Memorandum for Deputy Director (Support) from Assistant Director for Operations and Director of Communications, Subject: [REDACTED] Emergency Planning, dated 1 July 1955**
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1. The reference memorandum raised for consideration the issue of whether per diem could legally be paid to the dependents of Agency employees while such dependents are temporarily located at an evacuation post pending authorization either to return to the emergency post, or to proceed to a new post of assignment of the sponsor. The Office of Communications expressed concern that a hardship would be incurred if such dependents could be granted only a separation allowance, instead of per diem, if they were evacuated;

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- a. to the United States while awaiting return to [REDACTED] or while awaiting reassignment of the employee from [REDACTED] to some other overseas post; and
- b. if the dependents are required to obtain and pay for temporary housing facilities in the United States. (This condition has been restated by this Office to clarify the intent.)

2. Paragraph 6(b) of the reference memorandum recommended that the Director of Communications and the General Counsel collaborate in presentation of justification for paying per diem to dependents evacuated to the United States under the circumstances set forth in paragraph 1 above. This Office considers its function under this approved recommendation to advise you as to whether such per diem may be legally authorized.

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section 911 (8) of the Foreign Service Act of 1946 (Public Law 724, 79th Congress). The introductory paragraph to [REDACTED] provides for the payment of expenses authorized thereunder "in accordance with applicable provisions of the Foreign Service Regulations". Section 3.1(f) of the Foreign Service Travel Regulations, under heading of "Allowable Travel Expenses", reads:

"When ordered to evacuate a post, travel and per diem for employee and family and transportation of his effects from post to any destination specified in travel authorization, but no per diem at specified destination unless specifically authorized". (Underlining supplied.)

As will be noted, the language of section 3.1(f) does not distinguish between a United States and a foreign post of "destination".

4. The issue of whether per diem, when specifically authorized, could be paid to dependents if the post of evacuation was in the United States rather than in a foreign area was discussed with the representative of General Counsel's Office of the General Accounting Office who normally prepares the Comptroller General's opinions relating to travel. This representative agreed with this Office that the location of the post of evacuation made no difference in the authority to grant per diem to dependents under the language of Foreign Service Travel Regulation 3.1(f). He did, however, initially question whether the statutory authority of [REDACTED] the Foreign Service permitted the payment of such per diem regardless of the location of the evacuation post. The new issue raised at this point dealt with the legality of the quoted provision of Foreign Service Travel Regulation section 3.1(f) and was reported to the Assistant Director for Operations and the Director of Communications by an OGC Memorandum for the Record dated 19 July 1955.

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5. After further consideration, the informal decision of GAO is now that an exception would be taken to the authorized payment of such per diem. This conclusion is reached in this manner:

- a. The language of section 3.1(f), permitting the payment of per diem at specified destination if specifically authorized, derives its statutory authority from the broad phrase authorizing the payment of travel costs "incident to the removal of the members of the family".
- b. Statutory language, authorizing official action which may be taken in emergency situations, is customarily liberally construed by the General Accounting Office.
- c. In the absence of a specific prohibition in either law or the Foreign Service Regulations against the payment of the per diem in question, no objection would be taken.

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Inasmuch as a large number of the [redacted] dependents would be evacuated on vouchered funds, a definitive legal answer is available only through a formal opinion from the Comptroller General. However, in view of the informal answer and the fact that Foreign Service Travel Regulation 3.1(f) has been in effect since 1952 with no exception taken to authorizations made thereunder, this Office does not recommend that a formal ruling be requested.

6. The theory permitting payment of per diem to the dependents while at the evacuation post, which on the surface appears contrary to the general rule that per diem for dependents is paid only while in an actual travel status, is that time spent at the evacuation post constitutes a "delay en route" while in continuing travel status. Travel orders authorizing such per diem should be written accordingly.

7. In summary, you are advised that this Office perceives no legal objection to the payment of per diem to the dependents of Agency employees evacuated to an emergency post due to the prevalence of disturbed conditions at the post of the sponsor's assignment, whether such evacuation is to a temporary "destination" in the United States or in another foreign area.

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[redacted]

Office of General Counsel

cc: Comptroller
Director of Personnel
Director of Communications
Assistant Director for Operations

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GAO representative referred to: [redacted]